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Date: APRIL 12, 2005

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U.S. PATENT AND TRADEMARK OFFICE

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Client/Matter No.: AUS920010390US1 (9000/41)

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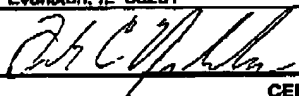
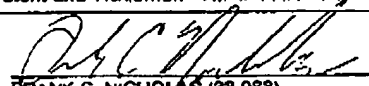
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<b>TRANSMITTAL FORM</b>  <i>(to be used for all correspondence after initial filing)</i>	Attorney Docket No.	AUS920010390UB1 (900041)
	Application Number	09/881,873
	Filing Date	JUNE 14, 2001
	First Named Inventor	KULVIR S. BHOGAL
	Group Art Unit	2683
	Examiner	OMARY, NAWARA

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Amendment <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)  <input type="checkbox"/> Status Letter  <input type="checkbox"/> Petition for Extension of Time Request (dup) <input type="checkbox"/> Express Abandonment Under 37 CFR 1.138 <input type="checkbox"/> Supplemental Information Disclosure Statement, PTO-1449, art <input type="checkbox"/> Certified Copy of Priority Document(s)  <input type="checkbox"/> Response to Missing Parts/ Incomplete Application	<input type="checkbox"/> Assignment Papers <input type="checkbox"/> Drawings <input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Petition Routing Slip (PTO/SB69) and Accompanying Petition <input type="checkbox"/> To Convert a Provisional Application <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request of Refund	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences  <input checked="" type="checkbox"/> Appeal Brief <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Post Card Receipt <input type="checkbox"/> Additional Enclosure(s) (please identify below) <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
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Indep.		Minus		0	x \$100=	0		x \$200=	
First Presentation of Multiple Dep. Claim					+ \$180=	—		+ \$360=	
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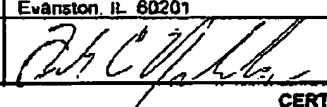
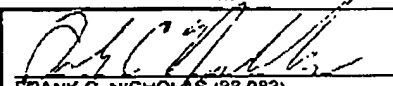
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	Application Number	09/851,873
	Filing Date	JUNE 14, 2001
	First Named Inventor	KULVIR S. BHOGAL
	Group Art Unit	2683
	Examiner	OMARY, NAWARA

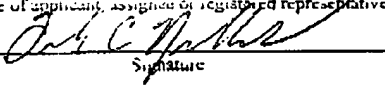
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	Claims After Amendment		Highest No Previously Paid For	Present Extra	Rate	Add'l Fee	Rate	Add'l Fee
Total		Minus		0	x \$25=	0	x \$50=	
Indep		Minus		0	x \$100=	0	x \$200=	
First Presentation of Multiple Dep. Claim					+ \$180=		+ \$360=	
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PATENT  
Case No.: AUS920010390US1  
(9000/41)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re patent application of:	)	
	)	
KULVIR S. BHOGAL, ET AL.	)	Examiner. OMARY, NAWARA
	)	
Serial No.: 09/881,873	)	Group Art Unit: 2683
	)	
Filed: JUNE 14, 2001	)	
	)	
Title: TRACKING COMMUNICATIONS	)	
USAGE TIME	)	

**APPEAL BRIEF**

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Dear Sir:

Appellants herewith respectfully present their Brief on Appeal as follows:

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Case No.: AUS920010390US1 (9000/41)  
Serial No.: 09/881,873  
Filed: June 14, 2001  
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#### 1. REAL PARTY IN INTEREST

The real party in interest is Assignee INTERNATIONAL BUSINESS MACHINES CORPORATION, by virtue of an assignment executed by the inventors on June 6, 11, and 13, 2001 and filed with the United States Patent and Trademark Office on June 14, 2001, recorded at reel number 011917 frame number 0707.

#### 2. RELATED APPEALS AND INTERFERENCES

Appellants and the undersigned attorneys are not aware of any appeals or any interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

#### 3. STATUS OF CLAIMS

Claims 1-32 are currently pending and claims 1-31 stand finally rejected while the Examiner has not addressed claim 32. Claims 1-3, 7-9, 12-18, 22-24 and 27-31 stand rejected as unpatentable over Lewis, et. al., United States Patent No. 5,684,861 in view of Westerlage, United States Patent No. 6,141,404. Claims 4 and 19 stand rejected as unpatentable over Lewis in view of Abe et. al., United States Patent No. 5,966,509. Claims 5 and 20 stand rejected as unpatentable over Lewis in view of Kraushaar et. al., United States Patent No. 4,200,711. Claims 6 and 21 stand rejected as unpatentable over Lewis in view of O'Donovan et. al., United States Patent No. 5,960,070. Claims 10, 11, 25 and 26 stand rejected as unpatentable over Lewis in view of Altshcul et. al., United States Patent No. 5,875,393.

Claims 1-32 are the claims on appeal. See, Appendix.

#### 4. STATUS OF AMENDMENTS

No amendments have been made, other than the addition of claim 32 in the September 17, 2004 response. A reply under 37 C.F.R. §1.111 was filed on January 6, 2004 and entered into the application. A previous appeal was filed in response to an office action mailed March 25, 2004, with an appeal brief filed June 4, 2004. A nonfinal office action response was filed September 17, 2004 in response to a July 14, 2004 office action.

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5. SUMMARY OF CLAIMED SUBJECT MATTER

The invention relates to a method of tracking communications usage time. In response to a call, time increments are counted, and a call count is determined based on the counted time increments. The call count is then modified based on calling plan parameters. A computer usable medium to accomplish the method steps is also provided, as well as a system including means for counting time increments in response to a call, means for determining a call count based on time increments and means for modifying the call count based. In one embodiment, the modified call count is stored in the memory of a cellular telephone unit.

Modifying the call count may involve several operations. One example of a call count modification is rounding the call count to the nearest minute. Another exemplary call count modification involves subtracting an initial open connection time from the call count. In another example, modifying the call count involves discounting incoming calls, or discounting nighttime or weekend calls. See, Specification of United States Patent Application, 09/881,873 at pages 6-7.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-3, 7-9, 12-18, 22-24 and 27-31 were rejected under 35 U.S.C. §103(a) under Lewis in view of Westerlage.

7. GROUPING OF CLAIMS

Claims 1-32 should be considered as two groups, claims 1-31 standing or falling with claim 1, and claim 32 standing alone.

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S. ARGUMENTS

**A. Lewis in view of Westerlage does not teach or suggest modifying the call count based on calling plan parameters**

Claim 1 requires “modifying the call count based on calling plan parameters.” As this limitation is not disclosed, nor taught or suggested, by Lewis in view of Westerlage, the §103(a) rejection has been traversed, and should be withdrawn. Because Lewis in view of Westerlage does not teach or suggest, at a minimum, “modifying the call count based on calling plan parameters,” as claimed in claim 1, “computer readable program code for modifying the call count based on calling plan parameters” as claimed in claim 16, and “means for modifying the call count based on calling plan parameters” as claimed in claim 31, this §103(a) rejection must fall.

The Examiner correctly notes that Lewis does not disclose modifying the call count based on calling plan parameters, and relies on Westerlage for such teaching. However, Westerlage only teaches that the billable time recorded for each *segment* may be modified – Westerlage specifically fails to teach the claimed elements. In column 9, lines 14-17, Westerlage defines a “call transaction” as “components of a single call transaction between complex 16 and a user of communication system 10.” As specified in column 11, lines 4-18, identified by the Examiner, Westerlage teaches that the billing for each segment may be rounded, truncated or otherwise modified. Westerlage does not teach or suggest modifying the call count based on calling plan parameters. Westerlage only teaches modifying the billing applied to a single call. Lewis in view of Westerlage does not teach or suggest “modifying the call count based on calling plan parameters” as claimed in claims 1 and 31.

Thus, Westerlage cannot teach the elements of claims 2 or 17 wherein the modified call count is added and an accumulated call count is determined. Contrary to the Examiner’s assertion, the reference does not teach that the call time is “modified as desired.” The reference merely teaches that the billing for a single call may be modified.



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Similarly, Westerlage does not teach subtracting the modified call count from a time ration and determining a remaining call time, as claimed in claim 3 or 18. Furthermore, Lewis does not teach subtracting the modified call count from a time ration, as claimed in claims 3 or 18. At most, Lewis teaches, at column 5, line 60-column 6 line 19, that telephone usage is monitored and generates statistical information. Lewis does not teach a "time ration" and Lewis does not teach subtracting the modified call count from the ration. Likewise, neither Westerlage nor Lewis teach or suggest determining a remaining call time.

Lewis does not disclose a modified call count as claimed in claim 9. Furthermore, neither Lewis nor Westerlage teach or suggest a special usage parameter, and neither reference teaches or suggests a special call count based on the special usage parameter and the modified call count. Further, claim 9 depends from claim 1. Therefore, claim 9 is allowable over Lewis.

Claims 12-15 depend directly from claim 9 and indirectly from claim 1, and are therefore allowable over the prior art for at least the same reasons. Claims 27-30 depend from claim 16 and incorporate limitations similar to claim 12-15 and are therefore allowable over the prior art for at least the same reasons.

#### **B. There is no motivation to combine the references**

The motivation to combine references can only come from the references, be reasoned from common knowledge in the art, or from legal precedent. "The level of skill in the art cannot be relied upon to provide the suggestion to combine references." MPEP §2143.01. In this case, the Examiner makes no showing that the motivation to combine the references comes from the references or that the motivation comes from legal precedent. Thus, the Examiner appears to be relying on "common knowledge in the art" – however, the Examiner makes no showing of what knowledge is common in the art, such as with official notice or an Examiner's Affidavit. As the motivation cannot come from the level of skill in the art, the Examiner needs to show facts, not allegations, to support that it is common knowledge in the art to combine these references. In view of the Examiner's failure to make such a showing, the §103(a) rejection must fall.

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The mere fact that references can be combined does not render the combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990), MPEP §2143.01. Merely alleging that each reference teaches a salutary teaching fails to satisfy the Examiner's burden.

The issue is whether Lewis in view of Westerlage would render obvious the claimed invention – under the strictures of §103(a), the references cannot. Withdrawal of the rejections to claims 1-3, 7-9, 12-18, 22-24 and 27-31 is requested.

The remaining claims, rejected under §103(a) each depend, directly or indirectly, from claim 1 and are allowable over the prior art for at least the same reasons. Where an independent claim is nonobvious, any claim depending therefrom is also non-obvious. *See* MPEP §2143.03 (If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ 1596 (Fed Cir. 1988)).

Therefore, specifically, claims 4 and 19 are patentable over Lewis in view of Abe as the references fail to teach or suggest “modifying the call count based on calling plan parameters” as claimed in claims 1 and 16. Claims 5 and 20 are patentable over Lewis in view of Kraushaar as the references fail to teach or suggest “modifying the call count based on calling plan parameters” as claimed in claims 1 and 16. Claims 6 and 21 are patentable over Lewis in view of O'Donovan as the references fail to teach or suggest “modifying the call count based on calling plan parameters” as claimed in claims 1 and 16. Claims 10, 11, 25 and 26 are patentable over Lewis in view of Altschul as the references fail to teach or suggest “modifying the call count based on calling plan parameters” as claimed in claims 1 and 16.

Thus, Group I is patentable over the prior art.

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**C. Lewis in view of Westerlage does not teach or suggest storing the modified call count in the memory of a cellular telephone unit**

In addition to the above elements, claim 32 from Group II requires storing the modified call count in the memory of a cellular telephone unit. At most, the references teach storing a call count at a monitor attached to a conventional cellular mobile telephone. See, Lewis, column 5, lines 37-42. As none of the references disclose, teach, or suggest this element, claim 32 is independently allowable over the prior art.

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**SUMMARY**

The Appellants respectfully submit that claims 1-32 fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested.

Dated: April 12, 2005

Respectfully submitted,  
Kulvir S. Bhogal, et al.

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### 10. APPENDIX

1. Method of tracking communications usage time comprising:  
counting time increments in response to a call;  
determining a call count based on time increments; and  
modifying the call count based on calling plan parameters.
2. The method of claim 1 further comprising;  
adding the modified call count; and  
determining an accumulated call count.
3. The method of claim 1 further comprising;  
subtracting the modified call count from a time ration; and  
determining a remaining call time.
4. The method of claim 1 wherein modifying the call count comprises  
rounding the call count.
5. The method of claim 1 wherein modifying the call count comprises  
subtracting an initial open connection time from the call count.
6. The method of claim 1 wherein modifying the call count comprises  
discounting an incoming call.

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7. The method of claim 1 wherein modifying the call count comprises discounting a nighttime call.
8. The method of claim 1 wherein modifying the call count comprises discounting a weekend call.
9. The method of claim 1 further comprising:  
providing a special usage parameter;  
calculating a special call count based on the special usage parameter and the modified call count.
10. The method of claim 9 wherein the special usage parameter comprises a long distance parameter, and the special call count comprises a long distance usage count.
11. The method of claim 9 wherein the special usage parameter comprises a local distance parameter, and the special call count comprises a local distance usage count.
12. The method of claim 9 wherein the special usage parameter comprises a nighttime usage parameter, and the special call count comprises a nighttime usage count.
13. The method of claim 9 wherein the special usage parameter comprises a weekend usage parameter, and the special call count comprises a weekend usage count.

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14. The method of claim 8 wherein the special usage parameter comprises a peak usage parameter, and the special call count comprises a peak usage count.

15. The method of claim 9 wherein the special usage parameter comprises an off-peak usage parameter, and the special call count comprises an off-peak usage count.

16. A computer usable medium including a program for tracking communications usage time comprising:  
computer readable program code for counting time increments in response to a call;  
computer readable program code for determining a call count based on time increments; and  
computer readable program code for modifying the call count based on calling plan parameters.

17. The computer usable medium of claim 16 further comprising;  
computer readable program code for adding the modified call count; and  
computer readable program code for determining an accumulated call count.

18. The computer usable medium of claim 16 further comprising;  
computer readable program code for subtracting the modified call count from a time ration; and  
computer readable program code for determining a remaining call time.

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19. The computer usable medium of claim 16 wherein modifying the call count comprises rounding the call count.

20. The computer usable medium of claim 16 wherein modifying the call count comprises subtracting an initial open connection time from the call count.

21. The computer usable medium of claim 16 wherein modifying the call count comprises discounting an incoming call.

22. The computer usable medium of claim 16 wherein modifying the call count comprises discounting a nighttime call.

23. The computer usable medium of claim 16 wherein modifying the call count comprises discounting a weekend call.

24. The computer usable medium of claim 16 further comprising;  
computer readable program code for providing a special usage parameter;  
computer readable program code for calculating a special call count  
based on the special usage parameter and the modified call count.

25. The computer usable medium of claim 24 wherein the special usage parameter comprises a long distance parameter, and the special call count comprises a long distance usage count.



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26. The computer usable medium of claim 24 wherein the special usage parameter comprises a local distance parameter, and the special call count comprises a local distance usage count.

27. The computer usable medium of claim 24 wherein the special usage parameter comprises a nighttime usage parameter, and the special call count comprises a nighttime usage count.

28. The computer usable medium of claim 24 wherein the special usage parameter comprises a weekend usage parameter, and the special call count comprises a weekend usage count.

29. The computer usable medium of claim 24 wherein the special usage parameter comprises a peak usage parameter, and the special call count comprises a peak usage count.

30. The computer usable medium of claim 24 wherein the special usage parameter comprises an off-peak usage parameter, and the special call count comprises an off-peak usage count.

31. A communications usage time tracking system comprising:  
means for counting time increments in response to a call;  
means for determining a call count based on time increments; and  
means for modifying the call count based on calling plan parameters.

32. A method of tracking communications usage time comprising:  
counting time increments in response to a call;  
determining a call count based on time increments;  
modifying the call count based on calling plan parameters; and  
storing the modified call count in the memory of a cellular telephone unit.

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**Evidence Appendix**

None

**Related Proceedings Appendix**

None.